

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Donna Vitale,

Plaintiff,

v.

Case No. 16-12654

Commissioner of Social Security,

Sean F. Cox

United States District Court Judge

Defendant.

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ORDER ADOPTING 3/26/19 REPORT AND RECOMMENDATION

Plaintiff Donna Vitale brought this action pursuant to 42 U.S.C. § 405(g), challenging Defendant Commissioner of Social Security's decision disallowing benefits. The parties filed cross-motions for summary judgment, which were referred to Magistrate Judge Stephanie Dawkins Davis for a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B). On September 1, 2017, the magistrate judge issued an R&R (ECF No. 20) wherein she recommended that Plaintiff's motion be granted, Defendant's motion be denied, the findings of the Commissioner be reversed, and that the matter be remanded for further proceedings.

On September 28, 2019, the Court entered an order adopting in part and rejecting in part Judge Davis's R&R. (ECF No. 23). In relevant part, the Court agreed with Judge Davis that the administrative law judge ("ALJ") "failed to provide 'good reasons' for the weight given to Dr. Kosal's opinion and the reasons for that weight." (ECF No. 23, PageID 1131). Accordingly, the Court adopted the R&R "to the extent that it recommends remanding for further evaluation of the opinion of Dr. Kosal." *Id.* The Court entered judgment in Plaintiff's favor and remanded this case

to the Social Security Administration for further administrative proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g). (ECF No. 24).

On December 24, 2017, Plaintiff moved for attorney fees and costs under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d)(1)(A). (ECF No. 25). The Government responded (ECF No. 26), and the Court referred Plaintiff’s motion to Judge Davis for an R&R. (ECF No. 27). On March 26, 2019, Judge Davis issued an R&R, wherein she recommends that the Court grant Plaintiff’s motion for attorney fees and that fees in the amount of \$5,512.50 be awarded to plaintiff, subject to an amended EAJA petition. (ECF No. 30).

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

On April 3, 2019, Defendant filed a timely objection to the March 26, 2019 R&R. Defendant’s only objection is that the R&R is “based on a misreading of the relevant case law.” (ECF No. 31, PageID 1193). Plaintiff responded to Defendant’s objection. (ECF No. 32).

Defendant’s objection essentially reargues the applicability of the case law it cited in response to Plaintiff’s underlying motion. The Court has reviewed Defendant’s arguments, Plaintiff’s response, and the cited case law, and agrees with Judge Davis’s thorough, well-reasoned R&R. The AL failed to adequately explain her findings—in clear violation of the treating physician rule—and the only reasons given for the weight assigned to Dr. Kosal’s opinion were perfunctory and conclusory. And, “while there might be sufficient factual evidence in the record to support the ALJ’s

decision, the government's decision to defend a deficient opinion is not thereby rendered *per se* reasonable. The Commissioner's litigation position must have a reasonable basis in both law *and* fact.” *Coy v. Astrue*, 2013 WL 141137 at *3 (N.D. Ohio, 2013). Here, Defendant’s litigation position lacked the former and was therefore not substantially justified. Thus, the Court finds that Plaintiff is entitled to attorney fees under the EAJA.

Accordingly, the Court overrules Defendant’s objection and hereby **ADOPTS** the March 26, 2019 R&R.

The Court **ORDERS** that Plaintiff’s Motion for attorney’s fees is **GRANTED**. The Court **AWARDS** fees in the amount of \$5,512.50 to Plaintiff.

IT IS SO ORDERED.

s/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 20, 2019